

21 C.J.S. Courts § 175

Corpus Juris Secundum | May 2023 Update

Courts

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V. Rules of Practice and Procedure

B. Operation and Effect of Court Rules

§ 175. Suspension or modification of court rules

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

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Although some authorities hold that a court has no power to suspend or modify its rules in a particular case, others hold that a court may exercise that power when justice requires; before a court may set aside its own rule, the court must assure itself that the substantive rights of the parties are not prejudiced and that the rule is not a mandatory rule.

It has been held that both the parties and the court must adhere to the rules of the court in all cases which fall within them, as long as they remain in force, and that the court has no power in a particular case—when no discretion is reserved—to suspend or to modify any rule that it has made.¹ On the other hand, there is authority that rules of court are but a means to accomplish the ends of justice, and that the court has the authority to modify, suspend, or rescind its own rules whenever justice requires it,² at least if no party will suffer prejudice.³ Furthermore, a trial court has broad discretion in determining whether to waive its rules.⁴


Before a court may set aside its own rule—and it should not be set aside lightly—the court must assure itself that it is in the interests of justice to do so, that the substantive rights of the parties are not prejudiced, and that the rule is not a mandatory rule.⁵ The general rule that a court not set aside its own mandatory rule refers to such rules as time limitations and other procedural prerequisites that are generally described as jurisdictional and from which courts may not waive compliance.⁶ Thus, neither the court or the parties by agreement can alter a jurisdictional rule.⁷ For nonjurisdictional issues, a court may suspend the requirements or provisions of rules of practice in a particular case on its own motion.⁸


A litigant desiring the easing of a court rule may be required to obtain leave of court,⁹ and the application will be refused unless strong supporting reasons are presented.¹⁰ Dispensing with or easing the application of a court rule is the exception, rather than the norm, under a rule that permits a court to relax or dispense with a court rule if adhering to it would result in an injustice.¹¹ A party's error does not constitute "good cause" to suspend the requirements of rules.¹² A court may extend

or shorten the time for doing an act required by court rules or an order of the court if the motion to do so is filed within the period prescribed for doing the act.¹³

CUMULATIVE SUPPLEMENT

Cases:

Court of Appeals would exercise its power under Rules of Appellate Procedure to suspend requirement that defendant's petition for certiorari state grounds for discretionary appellate review, where indictments charging defendant with possession of marijuana and heroin near public park with intent to distribute failed to contain essential allegation that defendant was over age of 21.  N.C. Gen. Stat. Ann. §§ 90-95(a)(1), 90-95(e)(10); N.C. R. App. P. 2, 21. *State v. Culbertson*, 805 S.E.2d 511 (N.C. Ct. App. 2017).

Court of Appeals would decline to invoke rule allowing for suspension of the rules in exceptional circumstances in order to issue writ of certiorari to review defendant's motion to dismiss that she made prior to her guilty plea to driving while impaired; defendant's writ petition failed to invoke any of the three grounds set forth in rule on writs of certiorari to justify issuance of the writ, and briefing rule generally limited review to only those issues properly preserved and briefed. N.C. Gen. Stat. Ann. § 15A-1444(e), N.C. R. App. P. 1(b), 2, 10(a)(1), 21(a), 28(b).  *State v. Ledbetter*, 794 S.E.2d 551 (N.C. Ct. App. 2016).

[END OF SUPPLEMENT]

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Footnotes

- 1 Ind.—*Poff v. McKilip*, 106 Ind. App. 241, 18 N.E.2d 963 (1939).
Amendment of rules of procedure by opinion not allowed
N.M.— *State v. Sanchez*, 2000-NMSC-021, 129 N.M. 284, 6 P.3d 486 (2000).
Tex.—*Collins v. Ison-Newsome*, 73 S.W.3d 178 (Tex. 2001).
- 2 U.S.— *American Farm Lines v. Black Ball Freight Service*, 397 U.S. 532, 90 S. Ct. 1288, 25 L. Ed. 2d 547 (1970).
Minn.— *State v. Erickson*, 589 N.W.2d 481 (Minn. 1999).
N.C.— *Steingress v. Steingress*, 350 N.C. 64, 511 S.E.2d 298 (1999).
Amendment of rules of procedure by opinion allowed
Fla.— *Williams v. State*, 777 So. 2d 947 (Fla. 2000).
N.J.—*State v. J.M.*, 182 N.J. 402, 866 A.2d 178 (2005).
- 3 N.J.—*Standard Embossing Plate Mfg. Co. v. American Salpa Corp.*, 113 N.J. Eq. 246, 166 A. 542 (Ch. 1933).

- 4 N.H.—*Donnelly v. Eastman*, 149 N.H. 631, 826 A.2d 586 (2003).
- 5 Ind.—*Buckalew v. Buckalew*, 754 N.E.2d 896 (Ind. 2001).
- 6 Ind.—*Buckalew v. Buckalew*, 754 N.E.2d 896 (Ind. 2001).
- 7 Fla.—*Metellus v. State*, 900 So. 2d 491 (Fla. 2005).
- 8 Conn.— *Monk v. Temple George Associates, LLC*, 273 Conn. 108, 869 A.2d 179 (2005).
- 9 N.J.—*Ash v. Cohn*, 121 N.J.L. 412, 3 A.2d 130 (N.J. Sup. Ct. 1938).
- 10 Ala.—*Williams v. State*, 27 Ala. App. 525, 175 So. 697 (1937).
- 11 N.J.—*State v. Williams*, 184 N.J. 432, 877 A.2d 1258 (2005).
- 12 N.H.— *State v. Dukette*, 145 N.H. 226, 761 A.2d 442 (2000).
- 13 Md.—*In re Timothy C.*, 376 Md. 414, 829 A.2d 1024 (2003).

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